

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FREDERICK LOUIS WARD,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

3:09-cv-00007-RCJ-VPC

ORDER

July 14, 2010

I. INTRODUCTION

On May 27, 2010, Frederick Ward ("plaintiff") filed a motion for stay of proceedings and judgment pending disposition of motions (#58). On June 1, 2010, plaintiff filed a motion to extend time to file his amended complaint (#64). No oppositions were filed.

II. HISTORY AND PROCEDURAL BACKGROUND

On February 26, 2010, the court issued a Report and Recommendation, which recommended dismissal of improperly named parties, but gave plaintiff leave to amend his complaint to name the proper defendants and include facts supporting his allegations (#36). On April 21, 2010, the District Court adopted the Report and Recommendation. Thereafter, plaintiff filed numerous papers in *pro se* (#38, #39, #41, #43, #44, #45), and the district court barred plaintiff from filing further papers himself, since he was represented by counsel (#54). On April 22, 2010, judgment was entered (#55), and on May 27, 2010, plaintiff appealed (#59). Plaintiff filed a motion to stay the proceedings, in which he also seeks to stay the judgment (#58), and he also filed a motion for extension of time to file his amended complaint (#64).

III. DISCUSSION

A. Notice of Appeal

Filing a notice of appeal usually divests the district court of jurisdiction over the matters appealed. *Kern Oil & Refining Co. v. Tenneco Oil Co.*, 840 F.2d 730, 733-34 (9th Cir. 1988). The

1 filing of a notice of appeal is an event of jurisdictional significance; it confers jurisdiction on the
2 court of appeals and divests the district court of its control over those aspects of the case involved
3 in the appeal. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (citing *United*
4 *States v. Hitchmon*, 587 F.2d 1357 (5th Cir. 1979)). The rule is “designed to avoid the confusion
5 and waste of time that might flow from putting the same issues before two courts at the same time.”
6 *Kern Oil & Refining Co.*, 840 F.2d at 734. The only jurisdiction retained by the district court during
7 the pendency of the appeal is to act to preserve the status quo. *Natural Res. Def. Council, Inc. v.*
8 *Southwest Marine Inc.*, 242 F.3d 1163 (9th Cir. 2001) (citations omitted).

9 Here, plaintiff filed his notice of appeal with respect to those named defendants who were
10 dismissed with prejudice. While it is prudent to stay all proceedings, the District Court has been
11 divested of jurisdiction over the issues presented in plaintiff’s appeal to the Ninth Circuit. The court
12 need not grant a stay where it has no jurisdiction. Therefore, with respect to the issues in plaintiff’s
13 appeal the court does not and cannot “stay” any proceedings.

14 With respect to the remaining issues, Fed. R. Civ. P. 62 provides that a stay pending
15 disposition of motions may only be granted if motions are pending under Rule 50, 52(b), 59, or 60.
16 Fed. R. Civ. P. 62(b). None of the pending motions relies on these procedural rules. Therefore, the
17 plaintiff’s motion for stay of proceedings and stay of judgment (#58) is denied.

18 **B. Extension of Time to File Amend Complaint**

19 The court granted plaintiff leave to amend his complaint to name the proper parties (#36,
20 #54). Plaintiff requests additional time to extend the filing deadline (#64). The court grants the
21 plaintiff an extension of fourteen (14) days from the entry of this order.

22 **IV. CONCLUSION**

23 **IT IS ORDERED** that Plaintiff’s motion for stay pending disposition of motions (#58) is
24 **DENIED.**

25 **IT IS FURTHER ORDERED** that Plaintiff’s motion for extension of time to file his
26 amended complaint (#64) is **GRANTED.**

DATED: July 14, 2010

int. Valerie P. Boden

UNITED STATES MAGISTRATE JUDGE